dishonour for the simple reason that, the prior endorsement being a forgery, there was no previous party to whom he could effectively give notice of dishonour. But Mr. Hume has contended, and, I think, correctly, that the principles enunciated in these two cases are strictly inapplicable since they deal with the position where the relationship between the immediate parties is that of a holder in due course whereas, in the instant case, the relationship between the defendant Bank and the plaintiff was simply that of a Banker acting as agent for his customer for the purpose of collecting the proceeds of a cheque and paying it to the customer's account. There was no question of the defendant Bank having accepted the cheque as a holder in due course from the plaintiff. It seems to me, therefore, that the principle laid down in *The London & River Plate Bank's case*, which at first appeared to me to be conclusively in favour of the plaintiff, is not strictly relevant for consideration on the facts of this case where the relationship between the parties was simply that of a collecting Bank acting as agent on behalf of its customer. For these reasons I am of the opinion, and I so order, that this appeal be allowed, with costs, and that the defendant Bank should be given unconditional leave to defend the action. Mr. Hume informed the Court that the defendant Bank was prepared to pay the amount involved into Court pending the determination of the matter. I do not think, however, that it is necessary for me to make any such order to that effect as a condition precedent to the defendant Bank being given leave to defend the action.

Appeal allowed.

Solicitors: *Hogan, Adams & Allan; Lee Thean-Chu.*

ANG TENG HAI v. REGINA

[A. C. J. (Rose C.J.) April 27, 1960]

[Singapore — Magistrate Appeal No. 206 of 1959]

Children and Young Persons Ordinance (Cap. 128), s.55(2) — Sentence of imprisonment not to be ordered — Fine — Quantum of.

Under section 55(2) of the Children and Young Persons Ordinance — "A young person shall not be ordered to be imprisoned for an offence, or to be committed to prison in default of a fine, damages or costs, unless the Court . . . . . ."

In this case the 1st appellant was a boy of some 15 years of age. He was amongst a group of six persons who were arrested as a result of police raid upon certain premises in which it was alleged a public lottery was carried on. Four of the six accused were acquitted, the present appellants only being convicted. The 1st appellant was sentenced to a fine of $3,000 in default a sentence of 3 months' imprisonment.

In exercise of his powers under section 299(c) of the Criminal Procedure Code, the learned Chief Justice altered the sentence by the deletion of the term of imprisonment in default.

MAGISTRATE'S APPEAL.

L. Rayner for the appellant.

A. W. Ghows (Deputy Public Prosecutor) for the respondent.

Rose C.J. (after dealing with the facts affirmed the conviction and continued): A point arises as to sentence. A fine of $3,000 was imposed, in default a sentence of 3 months' imprisonment. Learned counsel for the appellant points out — and it is conceded by learned Crown Counsel — that the sentence of imprisonment is not in accordance with the law, having regard to the provisions of section 55(2) of the Children and Young Persons Ordinance (Chapter 128).

In exercise of my powers under section 299(c) of the Criminal Procedure Code, I therefore alter the sentence by the deletion of the term of imprisonment in default.

As to the quantum of the fine, while it is true that the appellant is only a boy, the fact that he is the son of the man who controls the premises and who in fact may well have been fortunate at the actual time of the raid on that particular night in escaping implication in the management of the lottery, I consider that a substantial fine is in keeping with the circumstances of the case.

The fine, has, I am informed from the Bar been paid in full; the question therefore of any alternative punishment under section 62(1)(f) of the Children and Young Persons Ordinance is no longer important.

As far as this appellant is concerned, therefore, the appeal is dismissed and the conviction and sentence affirmed, subject to the deletion of the term of imprisonment in default.

As regards the 2nd appellant, he was alleged at the time of the Police raid to be actually holding in his hand a pad of papers containing records of stakes. His case, is therefore distinguishable from that of the other accused who were acquitted in the Court below, who were not alleged to have been taking any active part (at the moment of the raid) in the carrying on of the lottery.

This appellant made a statement, not on oath, in which he said that he was visiting the premises in order to make a purchase of some wire netting. Having regard to the hour — 8.45 p.m. — it is not surprising that the learned Magistrate rejected this explanation of the 2nd appellant's presence at the scene. Whether or not he was actually holding the papers alleged is a pure question of fact, eminently for the decision of the Magistrate.

It would, in my opinion, be wrong for me to interfere with the learned Magistrate's finding on the facts in this matter and the conviction must be affirmed.

As to sentence, a fine of $2,500 was imposed, in default a term of three months' imprisonment.

This fine was not paid and I am informed from the Bar that the appellant underwent a spell of 18 days' imprisonment pending this appeal. This appellant, a young man of 23, is, I am informed, a vegetable seller and a person of small substance. Moreover, it would seem that he played no prominent part in the management of the lottery that was undoubtedly being

conducted at the premises in question and was in all probability just a "runner". It is also, perhaps, significant that neither the 5th accused (the father of the 1st appellant) nor any one else connected with the premises has apparently taken any steps to pay the fine imposed upon this appellant. This would seem to support the view that he was not regarded by the management (whoever precisely they are) to be a person of any considerable importance in their scheme of things.

That being so, I am disposed to consider the fine of $2,500 to be excessive; and, in my opinion, justice will be done if the fine is reduced to one of $500, in default, a sentence of six weeks' imprisonment. And I so order.

In the event of the sentence of imprisonment becoming operative, the period of 18 days which this appellant has already spent in prison will be deducted from the sentence now imposed.

Order accordingly.

NEO CHAN ENG v. KOH YONG HOE

[O. C. J. (Neal J.) June 28, 1960]

[J. B. — Civil Suit No. 73 of 1960]

Negligence — Onus of proving — Failure to discharge — Absence of medical evidence — Whether inference can be drawn without any evidence on record.

Practice and Procedure — Use of interlocutory procedures — Preparation of case — Observations.

The onus of proving negligence on the part of the defendant is on the plaintiff. Where he fails to discharge it either by his own evidence or by cross-examination of the defendant or by admission made by the defendant his claim fails.

Observations on using the procedure of admissions and interrogatories and other interlocutory procedures in Johore, and inadequate preparation of case on the part of counsel.

Cases referred to:—

(1) *Low Say Thoot* v. *Sivasamy* F.M. Civil Appeal No. 8 of 1957, unreported.

(2) *Loo Soo Kwan* v. *Rajamah & Ors.* F.M. Civil Appeal No. 9 of 1957, unreported.

(3) *Marshall* v. *Owners of S.S. Wild Rose* [1910] A.C. 486, 487.

(4) *Owners of Ship Swansea* v. *Jessie Mary Rice & Millicent Rice* [1912] A.C. 238, 239.

ACTION FOR DAMAGES.

Robert S. A. Hsieh for the plaintiff.

J. D. Donnelly for the defendant.

Neal J.: The plaintiff by her amended Statement stated that on the 12th January, 1957, at about 5 p.m. she was on her way from her home to the shophouse opposite her house, that she had reached the grass verge on the other side of Jalan Scudai when a motor lorry, owned and driven by the defendant, suddenly and without warning hit and knocked her down, and that the lorry was being driven negligently and recklessly by the defendant. She proceeded to give particulars of the negligence. She claimed that as a result of being knocked down and as a result of the negligence of the defendant she suffered damages. At this stage I find it unnecessary to refer to the details of the damages she suffered.

The defendant denied all these allegations and stated that the accident was solely caused, or contributed to, by the negligence of the plaintiff, and he proceeded to give details of such alleged negligence.

The plaintiff in her evidence-in-chief, when asked by her own Counsel to give in detail what happened, contented herself with the following terse statement "When I was on the other side a lorry came along and knocked me down and my leg was fractured. When knocked down I became unconscious". In her cross-examination she was pressed for details, and she placed the point of impact on what I think on the evidence could be adequately described as the grass verge on the left hand side of the road, very close to the point pointed out by the defendant as the spot where after the accident she had lain.

The defendant in his evidence said that he was proceeding between 25 and 28 miles per hour in his estimation, but at any rate under 30 miles per hour — the speed limit for the area. Shortly after two lorries had passed him, a girl ran out from behind the last one and ran across the road in front of him. He swerved to the left, being unable to swerve to the right because of a vehicle coming from the opposite direction. (In his statement to the police he stated he swerved to the right). At that time his lorry was laden with 5 tons of flour. He braked and the vehicle finished up (although he does not in terms say this, it must be inferred from his evidence and the fact that he did not contradict the evidence of the police officer) at the spot where it was found when the police arrived. This evidence and the police investigation summarise the whole of the evidence before me on the question of negligence.

In addition to the fact that the plaintiff's evidence was unsatisfactory in that in her examination-in-chief she said she saw no traffic when she looked before crossing, in her cross-examination she said she saw a vehicle which she estimated to be away from the witness box to the centre of the causeway. Again her evidence as to her income and how it was made up in detail was quite unbelievable, and I was unable to accept her evidence as to what happened because of the evidence of the police investigating officer that there were no marks on the road or grass verge other than the ones he marked on the plan. In my opinion a lorry laden with 5 tons of flour would leave marks on the grass verge in the circumstances and the absence of any such marks establishes the incorrectness of the plaintiff's version of the accident, and there is nothing in the evidence of the defendant to which I could point as evidence of negligence.

On the other hand I cannot accept, in the light of the medical evidence, the defendant's version without the assistance of some medical evidence in respect of the actual type of the